Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

In re FREDERICK DUSTIN LYON,

PETITIONER

V.

MUNICIPALITY OF ANCHORAGE,

RESPONDENT

PETITION FOR COMMON LAW WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALASKA

PETITION FOR EXTRAORDINARY WRIT

FREDERICK DUSTIN LYON
IN PROPRIA PERSONA

POST OFFICE BOX 142
GIRDWOOD, ALASKA
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QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court for the State of Alaska, Third Judicial District at Anchorage, lack in personam jurisdiction over Petitioner Frederick Dustin Lyon?

2. Was the District Court for the State of Alaska, Third Judicial District at Anchorage, the proper venue for actions involving Petitioner Frederick Dustin Lyon?

3. Did Officer T. Games, Badge No. 596, Anchorage Police Department, violate Lyon's right to be secure in his papers and effects, guaranteed by Article IV of the Articles In Addition To, And Amendment Of, The Constitution Of The United States Of America, Proposed By Congress, And Ratified By The Legislatures Of The Several States, Pursuant To The Fifth

Article Of The Original Constitution (hereinafter "Bill of Rights"), by unlawfully conducting a search of Lyon's truck and seizing his passport from a leather pouch on the floor of his truck, without a search warrant, after Lyon had been placed under arrest?

4. Did the evidence submitted by the prosecution sustain the complaint against Lyon, and/or his subsequent conviction, for wilfully and unlawfully resisting, delaying, or obstructing Officer Games in the performance of his official duties after being lawfully stopped for driving with expired tags?

5. Did the appellate court judge err in taking judicial notice of the definition of the term ***person***, as used in the ordinances upon which Officer Games relied in stopping Lyon and charging him

with resisting an officer, determining that the term applied to Lyon?

6. Did the trial court judge err in not instructing the jury to disregard testimony of Officer T. Games, Anchorage Police Department (APD), regarding the exhibits which were denied admittance?

7. Did the arrest of Lyon by Officer Games of the APD for the Municipality of Anchorage, and the subsequent trial by the State of Alaska, violate the rights of Lyon, secured to the people by Article V of the Bill of Rights?

8. Did the arrest of Lyon by Officer Games of the APD for the Municipality of Anchorage, and the subsequent trial by the State of Alaska, violate the rights of Lyon, secured to people by Article VI of the Bill of Rights?

PARTIES

Petitioner, Frederick Dustin Lyon, in Propria Persona, is a white Citizen of Ohio with domicile therein, a constituent member of the sovereign body politic (Exhibit-D), residing in Alaska, with mailing address of Post Office Box 142, Girdwood, Alaska.

Respondent, Municipality of Anchorage, upon information and belief, a political subdivision of the State of Alaska, which is a political subdivision of the United States, is organized and chartered as a home rule municipality under the powers derived from the Federal Government under the Alaska Statehood Act, with principal offices located at 632 W. 6th Avenue, Anchorage, AK 99501.

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OPINIONS DELIVERED BY OTHER COURTS

1. Decision rendered at trial on November 5, 1992 in The District Court for the State of Alaska (Exhibit-A)

2. MEMORANDUM OPINION AND JUDGMENT, No. 2829, entered in The Court of Appeals of the State of Alaska, December 15, 1993 (Exhibit-B)

3. ORDER: Denial of PETITION FOR HEARING filed on January 27, 1994 by Frederick Dustin Lyon, entered at the direction of The Supreme Court of the State of Alaska, March 3, 1994 (Exhibit-C)

JURISDICTION

On December 15, 1993, the Court of Appeals of the State of Alaska entered a MEMORANDUM OPINION AND JUDGMENT, which sustained the conviction of Lyon at trial on November 5, 1992 in the District Court for the State of Alaska, Third Judicial

District at Anchorage. Lyon's subsequent PETITION FOR HEARING before the Supreme Court of the State of Alaska at Anchorage was denied in an order entered by that court on March 3, 1994.

This Court, that Petitioner Frederick Dustin Lyon is calling upon, derives its power from Article III of the Constitution for the United States of America, which states, in part:

> "**SECTION.** 1. The judicial Power of the United States shall be vested in one supreme Court,..."
>
> "**SECTION.** 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States,...
> In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

Rule 20 of the Rules of the Supreme Court of the United States, effective

January 1, 1990, titled *Procedure on a Petition for an Extraordinary Writ*, states in Section 20.1:

> "The issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any writ under that provision, it must be shown that the writ will be in aid of the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court."

Lyon hereby submits to this Court a petition for a common law writ of certiorari, identified as an extraordinary writ in Rule 20.6 of the Rules of the Supreme Court of the United States, effective January 1, 1990, the procedure on which is governed entirely by Rule 20. A common law writ of certiorari is contradistinguished from a statutory writ

of certiorari, which is addressed by Rules 10 through 16, inclusive. The All Writs Act [28 U.S.C. § 1651(a)], referred to in Rule 20 above, states:

> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

The language of 28 U.S.C. § 1651(a), quoted above, is derived from Section 14 of the First Judiciary Act, passed by authority of Congress of the United States on the 24th of September, 1789, which states in part:

> "Sec. 14. *And be it further enacted*, That all the before-mentioned courts of the United States, shall have the power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law..."

C.L. Bates, in his treatise, Federal Procedure At Law, 1908, Volume I, p. 401, confirms that the common law writ of certiorari is one of those "other writs not specially provided for by statute", mentioned in the First Judiciary Act:

> "(c) The Writ of Certiorari § 502. **Jurisdiction to issue the writ under the original judiciary act.**-- Under the fourteenth section of the original judiciary act, preserved as section seven hundred and sixteen of the revised statutes, which gave to all the courts of the United States power to issue all 'writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law,' the supreme court has power to issue the writ of *certiorari* either (1) as an auxiliary process only, to supply imperfections in the record of a case already before it, and not as a writ of error to review the judgment of an inferior court, or (2) **as an original and independent writ, whenever the circumstances imperatively demand it, as at common law, to correct excesses of jurisdiction, and in the furtherance of justice**, as in the

> case of judgments in contempt proceedings in excess of the jurisdiction of the lower court, and which are **not reviewable on appeal or writ of error**, but may be reached by *certiorari* in the absence of any other adequate remedy." [emphasis added]

John Bouvier, in his Institutes of American Law, 1851, Vol. 3, pp. 556-557, further clarifies the conditions under which a common law writ of certiorari is necessary to provide adequate relief:

> "3359. ... In general, there are two ways by which a superior court, which has a supervisory power over all inferior jurisdictions, **can correct the erroneous proceedings of inferior courts**; the first is by writ of error, which is of right, ...; the second is by *certiorari*, which is granted only at the discretion of the court, and generally lies at *any stage* of the proceedings in the court below. A question, which is not easily settled, frequently arises, which of these two remedies ought to be adopted in practice. **It may, however, be laid down generally, that when the lower court proceeds *according to the course of the common law*, and the court above can give a right judgment, where the**

inferior court has given a wrong one, then a writ of error is the proper remedy. It is also equally clear, that when neither this course of proceeding can be had, nor such right judgment given, then the certiorari is the proper remedy.

The writ of *certiorari* is issued in two kinds of cases; in one species it accompanies a writ of error,... The other kind,... does not accompany the writ of error, but lies in many cases where a writ of error cannot by law give a right judgment, when the lower court gives a wrong one, or in which the proceedings are not *according to the course of the common law*. In these cases, where the writ of error is not the proper remedy, the *certiorari* is the ground of the proceeding. It is first used to bring up the record and proceedings from the court below; when returned, the court above issues a notice to the party defendant respondent, in the nature of a summons. After this, the court above proceed to act, according to law and justice, in the decision of the case.

3360. ... As a writ of *certiorari* is not a writ *ex debito justitæ*, ... the court above must exercise discretionary power in issuing this writ, not accompanying a writ of error, and must therefore *allow* it to be issued, except when claimed by the government, and except in

some cases where this writ, from long usage and for particular reasons, has become a matter of course." [emphasis added]

The First Judiciary Act, in providing for writs of error, states:

"**SECTION** 22. *And be it further enacted*, ... And writs of error shall not be brought but within five years after rendering or passing the judgment or decree complained of, ..."

"**SECTION** 25. *And be it further enacted*, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had,... where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-

> examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution..."

As Bouvier pointed out in his Institutes of American Law, supra, a common law writ of certiorari is used to provide essentially the same relief as a writ of error, the primary factor determining which writ is appropriate being whether or not the lower court proceeded according to the course of the

common law. In the instant case, the lower courts did not proceed according to the course of the common law, but the issues raised by Lyon are within the range of issues described in Section 25 of the First Judiciary Act, for which a writ of error is applicable. Therefore, the proper remedy for Lyon is the common law writ of certiorari. As Section 14 of the First Judiciary Act gives no time limit within which "other writs" must be brought, Lyon relies on the time limit of five years allowed for bringing a writ of error, pursuant to Section 22 of that Act.

Further, as Lyon proceeds in propria persona, and not as a trained attorney, he relies on Section 32 of the First Judiciary Act, which provides:

> "**SECTION** 32. *And be it further enacted*, That no summons, writ, declaration, return, process, judgment, or other proceedings in

civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe."

As the decisions in *Fenemore vs. United States*, 3 U.S. 357 (1797), and *Stewart vs. Ingle*, 22 U.S. 526 (1824), clearly show, the court rule regulating

return of writs of error includes writs of certiorari. Therefore, Lyon relies on Rule No. 8 for Return to Writ of Error, Etc., of the Rules of the Supreme Court of the United States, revised and corrected at December term, 1858 (Exhibit-E).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED *

1. In Congress July 4, 1776. The unanimous Declaration of the thirteen united States of America.

2. Preamble to the Constitution for the United States of America.

3. Bill of Rights - Fourth Article.

4. Bill of Rights - Fifth Article.

5. Bill of Rights - Sixth Article.

6. Constitution for the State of Alaska, Article 1, Section 1.

7. Anchorage Municipal Code, AMC 9.04.370.

8. Alaska Statutes, AS 01.10.060.

* [Full text included as Appendix F]

STATEMENT OF CASE

Lyon was stopped on August 18, 1992 by an officer of the Anchorage Police Department for an alleged minor traffic infraction. When Lyon asserted his rights guaranteed by the Constitution for the United States of America and the Bill of Rights, he was placed under arrest and handcuffed. While confined in the officer's vehicle, the officer conducted a warrantless search of Lyon's truck and seized documents secured in a leather pouch under the front seat. Lyon was then transported to the Magistrate's office, and was released on his own recognizance.

Lyon was later charged, tried, and found guilty in the District Court for the State of Alaska on November 5, 1992 (Exhibit-A). Lyon appealed his conviction to the Court of Appeals for the State of

Alaska, which, in its Memorandum Opinion and Judgment, issued December 15, 1993, sustained the District Court's conviction (Exhibit-B). Lyon subsequently filed a PETITION FOR HEARING in The Supreme Court of the State of Alaska, which was denied (Exhibit-C), which now brings this petition for a common law writ of certiorari to this court.

The issues of this cause arise from Lyon's claims that the District Court for the State of Alaska, Third Judicial District at Anchorage, was not the proper venue for an individual of his status, and as such, that court lacked in personam jurisdiction over him. Lyon first made this claim at his arraignment on September 8, 1992, when he informed the court that he was "not responsive to this tribunal". He maintained his objection to venue and

in personam jurisdiction at his trial on November 5, 1992. In each instance when Lyon tried to explain his objection to venue and in personam jurisdiction, he was allowed to speak until he raised the issue of sovereignty, and his status as one of the sovereign body politic, at which time he was silenced by the court and his objection was overruled or denied. Since the issue of sovereignty concerns the contradistinction between those persons who are citizens of the United States, subject to the jurisdiction thereof, as provided for in the Fourteenth Amendment to the Constitution of the United States, and that one sovereign people, who adopted the Constitution for the United States of America, which formed a government of limited and enumerated authority, and the Bill of Rights, which further protected

the unalienable rights of the sovereign people from usurpation or disparagement by that government so formed, then by the actions of the District Court for the State of Alaska, Lyon was clearly prevented from ever raising constitutional questions before or at his trial. Further, the Court of Appeals of the State of Alaska has the temerity to deny constitutional issues raised by Lyon on appeal, for the purported reason that Lyon could not raise these issues for the first time on appeal.

REASONS FOR GRANTING WRIT

This Court should grant a common law writ of certiorari in this case for the following reasons, which are amplified in the statement of jurisdiction and the argument which follows:

1. Granting of this writ will aid this Court in exercising its appellate jurisdiction, as to law and fact, granted by Article III of the Constitution for the United States of America.

2. The tribunals for and of the State of Alaska, lacking the capacity and/or the willingness to adjudicate matters involving a constituent member of the sovereign body politic, such as Lyon, have caused a disparagement to Lyon, and have refused, neglected, or failed to address issues he raised relating to the Constitution for The United States Of America and the Bill of Rights. As one who conducts his affairs according to the principles of the common law, from time immemorial, whose inherent rights are transmitted by birth and blood, and not by the grant of citizenship provided by the

Fourteenth Amendment to the United States Constitution, Lyon is guaranteed access, under the due process clause of the Fifth Article of the Bill of Rights, to courts of the United States which are capable of adjudicating matters at common law, of which this Court is one.

3. As the record clearly shows, Lyon was unable to obtain any relief in this matter from the tribunals of and for the State of Alaska. Remedy by writ of error is no longer available to Lyon, and would not have been proper in this case even if available, as the lower courts did not proceed according to the course of the common law. This case is also not one that could be brought before this Court on appeal. Finally, Lyon's status as a sovereign Citizen of Ohio, who is not enfranchised as a citizen of the United

States by provisions of the Fourteenth Amendment, precludes him from the remedy provided to United States citizens by the statutory writ of certiorari. Lyon's only method of redressing his grievance is by petitioning this Court to issue a common law writ of certiorari to the Court of Appeals of the State of Alaska.

4. The way the tribunals of and for the State of Alaska have decided the issues raised by Lyon in the instant case, relating to his inherent rights secured by the Constitution for the United States and the Bill of Rights, are in direct conflict with applicable decisions of this Court rendered in cases such as *Yick Wo vs. Hopkins*, 118 U.S. 369 (1886), etc.

ARGUMENT

1. The Honorable Stephanie J. Rhoades, District Court Judge, Third

Judicial District, for the State of Alaska abused her discretion by holding that the District Court had in personam jurisdiction over Lyon. Under Alaska statutes, the District Court is a not a court of record, but a court of limited jurisdiction. Lyon challenged the jurisdiction of the court but his challenge was ignored by Judge Rhoades. (Definitions of ***person*** and ***people***, infra)

The appellate court erred in affirming the trial court's findings.

2. From the time the pre-trial hearing in this case commenced, and at every possible point thereafter, Lyon challenged the venue in which the charges had been raised.

> "Venue jurisdiction is the 'Power of the particular court to function'." *Brand v. Pennsylvania R. Co.*, 22 F.Supp. 569, 571 (D.C.Pa. 1938).

The District Court for the State of Alaska, Third Judicial District at Anchorage, is a style and kind of State Court, constituted as an Article I tribunal, vested with a style and kind of judicial power that is directly derived from the legislative power of the United States, granted by Article I, Section 8, Clause 9 of the Constitution for the United States of America. It is not an Article III Court, ordained and established by Congress in accordance with provisions of Article III of the Constitution for the United States of America. Therefore, the District Court for the State of Alaska is not vested with judicial Power of a state or of the United States. As such, it cannot be the proper venue for a Citizen such as Lyon.

> "The requirement of venue is specific and unambiguous; it is not

> one of those vague principles which, in the interest of some overriding policy, is to be given a 'liberal' construction." *Olberding v. Illinois Central R. Co., supra,* at 340. *Schnell v. Peter Eckrich & Sons*, 365 U.S. 260, 264 (1961)

Lyon argued that, because of his status, as a Sovereign Citizen of Ohio, residing in Alaska, actions at law which involve him must be brought in an Article III court, as described above. The appellate court erred in affirming the trial court's findings.

3. Officer T. Games, Badge No. 596, of the APD, exceeded and abused his legitimate authority and violated Lyon's right to be secure in his papers and effects, guaranteed by Article IV of the Bill of Rights, by unlawfully conducting a search of his truck, without a warrant, after Lyon had been placed under arrest.

Officer Games first requested Lyon to produce certain papers, considered by Lyon to be privileged or protected, such protection guaranteed by Articles IV and V of the Bill of Rights. When the papers were not produced, Officer Games, without a warrant, and without asking Lyon for permission to search his truck, conducted the unlawful search and found and seized Lyon's passport, which was in a leather pouch under the front seat of his truck.

The United States Supreme Court, in its decision in *Boyd v. United States*, 116 U.S. 616, 629 (1886), stated:

> "...It is very certain that the law obligeth no man to accuse himself, because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it would seem that search for evidence is disallowed upon the same principle. Then too, the innocent would be confounded with the guilty.

> ...And any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers to convict him of a crime, or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom."

The appellate court erred by not holding that Officer Games had violated Lyon's rights by the warrantless search of Lyon's truck and seizure of Lyon's papers.

4. The appellate court erred in upholding the findings of Judge Rhoades that the prosecution had submitted sufficient evidence to sustain the complaint against and/or the conviction of Lyon.

The prosecution failed to present any evidence supporting the allegation that Lyon's acts were wilful and unlawful, that

Lyon resisted Officer Games in the performance of his official duties, that Lyon delayed Officer Games in the performance of his official duties, or that Lyon obstructed Officer Games in the performance of his official duties.

In this case, Lyon was only exercising his right not to talk or to offer any evidence that might be used against him in a court of law.

> "[1] The *See* and *Reisman* decisions, ..., reflect the obvious concern that there be no sanction or penalty imposed upon one because of his exercise of constitutional rights... (a person has the right 'to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty ... for such silence')" *Sherar* v. *Cullen*, 481 F.2d 945, 947 (1973)

The argument offered by the Municipality of Anchorage in support of the charge that Lyon had wilfully and unlawfully resisted, delayed, or

obstructed Officer Games in the performance of his official duties, consisted solely of the testimony of Officer Games, that Lyon failed to identify himself to the officer.

5. The appellate court erred in finding that the Anchorage Municipal Code contains no general definition of the term ***person***. (AMC 9.04.370, infra) By relying on the definition of the term ***person*** in Webster's New World Dictionary of American English (3rd College Ed., 1988, p. 1008), the appellate court assigned a definition to be used which does not conform to the Alaska statutes and Anchorage Municipal Code ordinances which Officer Games relied on in stopping Lyon and charging him with resisting an officer.

The definition of ***person*** which Judge Stephanie Rhoades took judicial notice of,

set forth in the Anchorage Municipal Code, determining that it applied to Lyon, is:

> AMC 9.04.370 Person. "Person" means every natural person, firm, corporation, company, partnership, association, organization, business, trust or society.

Similarly, as used in the Alaska statutes, the term ***person*** is defined as:

> AS 01.10.060 "Person" includes a corporation, company, partnership, firm, association, business trust, or society, as well as a natural person;

Lyon argued that application of the term ***person***, as used in the Anchorage Municipal Code and Alaska Statutes, to one such as himself, is unconstitutional. The State of Alaska, as a political subdivision of the United States, has the power to create, and hence the power to regulate and tax a ***person*** (corporation, company, partnership, firm, association, business trust, or society) out of

existence without infringing upon the protections guaranteed by the Constitution for the United States of America and the Bill of Rights, since no such protections are contained therein for such an entity.

> "The Constitution of the United States was made by, and for the protection of, ***the people*** of the United States." *League v. De Young*, 11 How. (U.S.) 203 (1850) [Emphasis added]

Lyon, on the other hand, is Posterity of that ***one people*** who became vested with the prerogatives of the king. As such, he is a man endowed by his Creator with inalienable rights, secured and protected by the Constitution for the United States of America and the Bill of Rights, and confirmed by innumerable cases of settled law. He, as a constituent member of the sovereign body politic, cannot be destroyed by the agent (government) that is allowed to exist by and to do his will.

The term ***person*** is a very ambiguous term which has a different meaning in law than it does in civil life. With the adoption of Amendments XIII, XIV, and XV to the Constitution of the United States, knowledge of the true legal meaning of ***person*** has become especially important. Black's Law Dictionary, 6th Edition, at page 1142, under the term ***person***, states:

> "Scope and delineation of term is necessary for determining those to whom Fourteenth Amendment of Constitution affords protection since this Amendment **expressly applies to 'person'**." [emph. added]

The importance of discerning the true legal meaning of ***person*** was recognized as early as 1910, as reflected in Volume 13, pages 137-162 of American Law and Procedure, which states:

> "This word 'person' and its scope and bearing in the law, involving, as it does, legal fictions and also apparently natural beings, it is difficult to understand: but it is

absolutely necessary to grasp, at whatever cost, a true and proper understanding of the word in all the phases of its proper use... The words persona and personas did not have the meaning in the Roman which attaches to homo, the individual, or a man in the English; it had peculiar reference to artificial beings, and the condition or status of individuals... A person is here not a physical or individual person, but the status or condition with which he is invested... not an individual or physical person, but the status, condition or character borne by physical persons... The law of persons is the law of status or condition..."

"A moments reflection enables one to see that man and person cannot be synonymous, for there cannot be an artificial man, though there are artificial persons. Thus the conclusion is easily reached that the law itself often creates an entity or a being which is called a person; the law cannot create an artificial man, but it can and frequently does invent him with artificial attributes; this is his personality ... that is to say, the man-person; and abstract persons, which are fictitious and which have no existence except in law; that is to say, those which are purely legal conceptions or creations." [emphasis added]

The term ***person***, then, does not necessarily encompass every individual within the geographical boundaries of the several states or the territories of United States. When pertaining to legal matters, it is concerned with those entities or individuals whose legal existence is created by law. They are ***persons*** whose legal existence and rights to life, liberty, and property are created by law, of which Pollack, in Racial Discrimination and Judicial Integrity, 108 U.of Pa. L. Rev. 1, (1959), said, "... it is precisely those enterprises that are 'creatures of the law', to which the fourteenth amendment is addressed." They are subjects, as denoted by the phrase, "and subject to the jurisdiction thereof" in the first section of the Fourteenth Amendment.

The word ***people***, on the other hand, denotes the characteristic of sovereignty, as noted in Bouvier's Law Dictionary, Vol. 1, page 276, (1870), where the word ***citizen***, within the meaning of the original constitution, is defined as:

> "One of the sovereign people. A constituent member of the sovereignty, synonymous with the people."

Also of significance, Black's Law Dictionary, 6th Edition, at page 1135, defines the word ***people*** as:

> "A state; as the people of the state of New York".

Even the 1946 Encyclopedia Americana, Vol. 25, page 506, reveals as much:

> "It is the state [people], it is to be observed, that is the possessor of sovereignty ... not the government ... the state [people] itself is the creator of all law, the state [people] is not itself a product of the law. Constitutions create governments not states. They are the creations of states [people] already existent."

Also readily observable is the fact that the Preamble to the Constitution for the United States of America and the Preamble to every sovereign state constitution, use the word ***people***, not the term ***person***, to identify the author of those constitutions; in contradistinction to the Fourteenth Amendment, which uses the term ***person***, not the word ***people***, to identify those thereby enfranchised as "citizens of the United States", "subject to the jurisdiction thereof".

Undeniably, the law recognizes a clear distinction between ***persons*** and ***people***, just as it recognizes a clear distinction between the people of a state and the State (government) formed by the state (people). Of particular relevance to the instant case, the text of the Constitution of the State of Alaska begins

by differentiating ***persons*** from ***people***. Article I, Section 1 states:

> "This constitution is dedicated to the principles that ... all ***persons*** are equal and entitled to equal rights, opportunities, and protection under the law; and that all ***persons*** have corresponding obligations to the ***people*** and to the State." [emphasis added]

The correct legal principle that must be applied to original citizenship is that constituent members of the sovereign body politic, who referred to themselves as "We, the People of the United States" in the Preamble to the Constitution for the United States of America, are not subject to the general legislative powers of State governments or the federal government.

> "The ***people*** who created this government endowed it with broad powers. They created a sovereign state with power to function as a sovereignty. <u>But the citizens themselves are sovereign, and their citizenship is not subject to the general powers of their government.</u> Whatever may be the scope of its

> powers to regulate the conduct and affairs of all ***persons*** within its jurisdiction, a government of the people cannot take away their citizenship simply because one branch of that government can be said to have a conceivably rational basis for wanting to do so." (emphasis added) Chief Justice Warren dissenting in *Perez v. Brownell*, 2 L.Ed 603, 618 (1958)

As this cite clearly shows, Chief Justice Warren has a lucid understanding of the fundamental contradistinction between the immutable citizenship enjoyed by constituent members of the sovereign body politic (or the ***people***), and the style and kind of statutory citizenship created and defined by the Fourteenth Amendment, enjoyed by those ***persons*** enfranchised by that amendment as citizens of the United States.

Before enactment of Amendments XIII, XIV, and XV to the Constitution of the United States, which were adopted by

agreement between the government of the United States and State governments formed by constitutions adopted by the sovereign people, the relationship of the government of the United States to those other peoples inhabiting the land within the jurisdiction of the United States resembled that of a ward to his guardian, as clearly seen in Supreme Court's decision in *Cherokee Nation v. Georgia*, 5 Pet. 1, 17 (1831), which in part states:

> "They look to our government for protection; rely upon its kindness and its power; appeal to it for relief of their wants; and address the president as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory and an act of hostility."

Prior to adoption of the aforesaid amendments, the unfortunate Negro race had endured much suffering and mistreatment at the hands of certain State governments, which had been exceeding their legitimate authority. As those governments had been ignoring the dispositions of the supreme authority, that one Christian people who instituted them and who expected them to employ, within the limited and enumerated authority granted to them by the sovereign people, such Christian principles as would have been necessary to afford protection to all within their jurisdictions, radical measures were required to right the wrong. With the adoption of Amendments XIII, XIV, and XV, Negroes were granted a protection to their life, liberty, and property, as has always been enjoyed by the sovereign

body politic, consistent with the Christian principles by which they live.

The nature of this protection was described by the Supreme Court of the United States in *Choctaw Nation v. United States*, 119 U.S. 1, 28 (1886):

> "The recognized relation between the parties [the United States and the Choctaw Nation in this case] ... is that between a superior and an inferior, whereby the latter is placed under the care and control of the former, and which, while it authorized the adoption on the part of the United States of such policy as their own public interest may dictate, recognized, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence, **formulating the rights and obligations of private persons, equally subject to the same laws."**

As a political concept, sovereignty is an attribute normally applied only to government. However, those who so use the term either do not understand the concept or intentionally misapply it. A proper perspective of sovereignty begins with the acknowledgement that God Almighty, who creates men and endows them with certain inalienable rights, is the Sovereign power who created and rules the entire universe. Man, His highest creature, has been given dominion over the earth and commanded to subdue it (Genesis 1:28). As expressed in Psalms 8:5-6, God "hast crowned him with glory and honor", made "him to have dominion over the works of thy hands", and has "put all things under his feet". Man, therefore, is sovereign in his realm, and must respect only the dispositions of the Sovereign power who created him. As the

creation of man, government enjoys sovereignty only to the extent, and within the realm, ordained by its creator. Government, therefore, must respect the dispositions of the sovereign who created it. Within this framework, the sovereign body politic ordained and established constitutions which formed governments to serve as their agents, as confirmed by numerous legal cites. For example:

> "Government is not sovereignty. Government is the machinery or expedient for expressing the will of the sovereign power... This ***sovereign power*** in our government belongs to ***the people***, and the government of the United States and the governments of the several states are but the machinery for expounding or expressing the will of the sovereign power... But it must be remembered, under our government, all sovereign power is lodged in the people; and the government, by its different departments, can exercise only such power as has been delegated to it by the people." *Cherokee Nation v. Southern Kan. R. Co.*, 33 F. 900, 906-13 (1888) [Emphasis added]

> "Here we see the ***people*** acting ***as sovereigns*** of the whole country; and in the language of sovereignty, establishing a constitution by which it was their will that the state governments should be bound, and to which the state constitutions should be made to conform." *Chisholm v. Georgia*, 2 Dall. (U.S.) 471 (1793) [Emphasis added]
>
> "***Sovereignty*** itself is, of course, ***not subject to law***, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, ***sovereignty itself remains with the people***, by whom and for whom all government exists and acts. And the law is the definition and limitation of power." *Yick Wo v. Hopkins*, 118 U.S. 369 (1886) [Emphasis added]

Within the meaning of the original constitution, the words ***people***, ***sovereign***, and ***citizen*** are synonymous. Therefore, if the term ***person***, as used in law, encompasses the posterity of "We the People", reason demands that there should be a definition of that term that includes the words: ***people***, ***sovereign***, or ***citizen***.

Most statutes and regulations, including those under which Lyon was charged, use the term ***person*** to designate who the statute or regulation applies to. Almost every statutory definition of the term ***person*** is the same, with only minor modifications. (See previous definitions of ***person*** from Anchorage Municipal Code and Alaska Statutes) To date, Lyon has been unable to find a single instance in the Anchorage Municipal Code where the words ***people***, ***sovereign***, or ***citizen*** are used in a definition of the term ***person***.

> It is a maxim of the common law, ..., that ... when a statute is general and any prerogative, right, title, or interest would be divested or taken from the king, in such a case he shall not be bound unless the statute is made by express words to extend to him, for which he cites both English and American authorities, and adds, that **the people** of the State **being sovereign** have succeeded to the rights of the former sovereign, and that the people of the State <u>are</u>

not bound by the general words in the ... law.* *United States v. Herron*, 87 U.S. 251, 263, 22 L.Ed 273. [emphasis added]

Ostensibly then, the term ***person*** and the word ***people***, extensively explored in the preceding discussion, as used in the law, are not synonymous. Also evident is that the ***people*** are sovereign, and not subject to the same style and kind of regulations as are ***persons***. The conclusion is inescapable that District Court Judge Rhoades erred in holding, and the appellate court erred in affirming, that Lyon is a ***person*** subject to the ordinances under which he was charged.

6. The appellate court erred by finding that Lyon had not objected to the testimony of Officer Games regarding exhibits which were denied admittance, and that his testimony, even if inadmissible, was harmless. These holdings are absurd.

Lyon is protected by Article IV of the Bill of Rights from unreasonable searches and seizures. From the first moment that Officer Games indicated an intention to deprive Lyon of his inherent right to travel, until Lyon was eventually convicted, Lyon maintained an attitude of firm resolve, seizing every opportunity presented to him to challenge venue and in personam jurisdiction, At every occasion, he was denied his due process of law, guaranteed by Article V of the Bill of Rights, which has been recognized and upheld by this Court since its establishment. Officer Games testimony, crucial to the conviction of Lyon, could not have been given had he not unlawfully searched Lyon's truck, as his testimony consisted of facts that could only have

been determined by investigation of items taken unlawfully from Lyon's truck.

7. The appellate court neglected, failed, or refused to address the issues raised by Lyon that his rights, retained by the people and guaranteed by Article V of the Bill of Rights, which states in part, that, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,...", had been violated. The State of Alaska, as a political subdivision of the United States government, which acts for the government of the United States, must look to the Bill of Rights before taking any action against a member of the sovereign body politic. On every occasion, when Lyon tried to bring this subject of sovereignty and inherent rights before the trial court

and appellate court, he was denied, overruled, or ignored. As cited in 16A Am Jur 2d, Sec. 447, p. 218-219:

> "The first ten amendments to the Federal Constitution itself are in the nature of a Bill of Rights. Their adoption was insisted on and took place in order to quiet the apprehension of many that without some such declaration of rights the government would assume, and might be held to possess, the power to trespass upon those rights of persons and property which by the Declaration of Independence were affirmed to be inalienable rights. Without promise of a limiting Bill of Rights, it is doubtful if the Federal Constitution could have mustered enough strength to gain ratification. It is well settled that these Ten Amendments, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which the colonists had inherited from their English ancestors and which had from time immemorial been subject to certain well-recognized exceptions, but instead they have been recognized as if they had been formally expressed in the text of the amendments...

> If there is any conflict between the provisions of the Constitution and of an amendment, the amendment must control, under the well-understood rule that the last expression of the will of the lawmaker prevails over an earlier one."

What more can be said with regard to this cause?

8. The appellate court neglected, failed, or refused to address the issues raised by Lyon that his rights, secured to the people by Article VI of the Bill of Rights, which states in part, that, "the accused shall...be informed of the nature and cause of the accusation...", had been violated. Under principles and usages at common law, from time immemorial, Lyon has not committed any criminal act that infringed the inherent right to life, liberty, or property of a member of the sovereign body politic or the civil rights of any person. Further, he was never

informed of the nature or cause of any such criminal act by anyone involved in this matter. A sovereign citizen can only be obliged to obey a statutory law, enacted by a government created by a constitution adopted by the sovereign people, when there is a direct link to an enumerated authority of that government's constitution. The appellate court failed to look to the Constitution for the United States of America to determine which enumerated authority applied to Lyon in regulating his use of the public highways. Lyon has always argued in this cause that no such authority exists.

The Municipality of Anchorage, as a political subdivision of the State of Alaska, and the State of Alaska, as a political subdivision of the United States government, hold only such power as has

been granted to them by Congress of the United States, and are therefore bound by the limitations contained in the Constitution for the United States of America and the Bill of Rights.

The word ***public***, in the American jurisprudence, is synonymous with the words ***people***, ***sovereign***, and ***citizen***. Adoption of Amendments XIII, XIV, and XV to the Constitution of the United States enfranchised a new body politic, which is synonymous with the term ***general public***. Consequently, the word ***public***, as used in the Sixth Article of the Bill of Rights, which states, "...the accused shall enjoy the right to a speedy and public trial...", is contradistinguished from the term ***general public***. Lyon has always argued, and the record confirms, that Lyon was deprived of a public trial and was

tried by the general public, which are not his peers, or equals. The denial of a public trial to Lyon constitutes a disparagement to him.

SUMMARY OF ARGUMENT

The underlying failure of the trial court and appellate court in this matter is their refusal to properly recognize the issue of venue. Yes, *venue* is "geographical area"; but the number of styles and kinds of jurisdictional tribunals *in that venue* is more than one. As an example, the ten square mile area that became the seat of government of the United States, can be referred to as Washington, D.C., District of Columbia, City of Washington, or a county in Maryland, etc.

Presumably, the District of Columbia refers to the seat of government, which is

of a national venue, whereas the City of Washington is the local government that Congress formed to take care of the local needs of that ten square mile area, which is a style and kind of a federal venue. Washington, D.C. is referred to as the capital of the United States - again, a federal venue, but of a different style and kind, which did not exist prior to adoption of Amendments XIII, XIV, and XV to the Constitution of the United States. That is when the phrase "United States Government", "United States Congress", "United States Citizen", and "United States Whatever" came into existence.

Here, in this geographical area of Alaska, the "State of Alaska", which is the title of an agency, takes care of that business delegated to it by the act of Congress which formed this latest style

and kind of government for this territory known throughout the world as "Alaska". In so doing, Congress exercised the authority granted to it by Article IV, Section 3, Clause 2, of the Constitution for the United States of America.

To Lyon's knowledge, in Alaska, the sovereign people have never ordained and established a constitution to form a State government of the same style and kind as, and on equal footing with, those governments which were formed by those constitutions ordained and established by the original thirteen states.

In Alaska, Lyon has a residence. He does not reside or have residence within, or have any privilege under, the State of Alaska. As Alaska and the State of Alaska are coextensive, one can see the same venue, but the question of jurisdiction

over the person is of paramount importance. Lyon is not one subject to the State of Alaska, as he is not one of its citizens.

Just as there are many overlays of venue in the same geographical areas, there are also many overlays of bodies politic, starting with the sovereign body politic. The first enfranchised body politic was formed by the adoption of Amendments XIII, XIV, and XV to the Constitution of the United States. Since that time, other enfranchised bodies politic have been formed, as well. Each body politic is responsive and subordinate to the power that gave birth to it.

With the adoption of the Constitution for the United States of America by the sovereign people, which became operative upon ratification by the ninth state,

wherein the one people met in conventions, a new government of limited and enumerated authority was formed. With the formation of that government, the operations of which commenced on the 4th of March, 1789, the constitution that created it, existing by the will of that one people, mandated that government to put into effect, as soon as possible, those things enumerated therein. As an example, the First Judiciary Act was passed the 24th of September, 1789, fulfilling the mandate of Article III to ordain and establish inferior Courts.

When the governments of the several states, and the government of the United States, acting within their respective enumerated authorities, adopted, by agreement between themselves, Amendments XIII, XIV, and XV to the Constitution of

the United States, which enfranchised a new body politic, the United States government was formed, subordinate to the government of the United States, to administer that enumerated authority, mandated by the original constitution, that still exists, unamended, by the will of the people.

Throughout the preceding discussion, one must not lose sight of the understanding, held by the one people, of just what they gave birth to when they adopted constitutions to form governments. According to *A DICTIONARY of the ENGLISH LANGUAGE in which The WORDS are deduced from their ORIGINALS, and ILLUSTRATED in their DIFFERENT SIGNIFICATIONS by EXAMPLES from the best WRITERS to which are prefixed, A HISTORY of the LANGUAGE, and An ENGLISH GRAMMAR,* by Samuel Johnson

(published 1755), "government" is defined as "form of a community with respect to the disposition of the supreme authority." As that same dictionary defines "disposition" as "order; method; distribution", when the people, "the supreme authority", gave their "order", the government then formed, and all subsequent governments formed beneath it, including the current United States government, must obey, respect, and act in accordance to that order. That one people are a Christian people and their "order" was, and still is, in accordance with the will of Almighty God, the only higher power above them, creating beneath them "ministers" of God, empowered to execute His will on this earth, to which he has given man, to exercise dominion over it.

Consequently, this current style and kind of United States Supreme Court, when sitting as the Supreme Court of the United States of America, must fulfill all obligations imposed on it by those Acts of Congress passed prior to its existence. When one of the sovereign people stands before one of those courts, constituted by any act of United States Congress, he is not one that is obliged to obey any of the rules or regulations under which those courts are bound to operate in the fulfillment of the mandate imposed on them to dispense a style and kind of justice to persons deemed by the United States government to be "its" citizens. In such instances, those courts must still look to the rules at common law, from time immemorial, which restrict those courts and the federal government to looking to

Article III of the Constitution for the United States of America and the Bill of Rights only, and not beyond, and require them to act accordingly. As this court is aware, common law is distinguished from statute law, which derives its authority from acts of Congress, and each must be allowed to operate within its proper realm, firmly established under American jurisprudence. The sovereign people look to the common law to right the wrong, to punish the evil, and to keep the agents who act for them, in their proper realm.

Since Lyon's first appearance before a tribunal of or for the State of Alaska, he has consistently claimed his rights as one of the sovereign people, but has been repeatedly overruled or denied. The words of Edwin E. Bryant, from *The Constitution of the United States with Notes of the*

Decisions of the Supreme Court thereon, from the Organization of the Court till October, 1900, are particularly relevant:

> "*The right of the people of the territories to trial by jury.* -- In a criminal prosecution in the District of Columbia the accused claimed the right of trial by jury. In this case, the Court says: 'As the guaranty of a trial by jury, in the third article, implied a trial in that mode and according to the settled rules of the common law, the enumeration in the Sixth Amendment of the rights of the accused in criminal prosecutions is to be taken as a declaration on what these rules were, and is to be referred to the anxiety of the people of the States to have in the supreme law of the land, and so far as the agencies of the general government are concerned, a full and distinct recognition of those rules, as involving the fundamental rights of life, liberty and property. This recognition was demanded and secured for the benefit of all the people of the United States, as well as those permanently or temporarily residing in the District of Columbia as those residing in the several States. There is nothing in the history of the Constitution or of the original amendments to justify the assertion that the people of

> the District of Columbia may be lawfully deprived of the benefit of any of the constitutional guaranties of life, liberty and property; especially of the privilege of trial by jury in criminal cases.' 'We can not think that the people of this district have in that regard less rights than those accorded to the people of the territories of the United States.' Callan v. Wilson, 127 U.S., 540, 549, 550; Thompson v. Utah, 170 U.S., 343."

CONCLUSION

Thomas Paine, in *Common Sense*, an eloquent discourse on the liberty enjoyed by the Americans of his day, wrote:

> "If the present generation, or any other, are deposed to be slaves, it does not lessen **the right of the succeeding generation to be free.** Wrongs cannot have a legal descent." p. 197 (emphasis added)

Man was created to grow in knowledge and wisdom as he ages, but as man oftentimes neglects to adhere to this natural principle of life, Lyon has so neglected it in his past. However, he,

unlike so many others, has seen the error of his former ways. Since the beginning of this cause, Lyon has clearly shown himself to be one who is growing in knowledge and wisdom, evidenced by his written and spoken word. In the beginning of this cause, he was as a young child just learning to speak and walk upright. There could be some fault in his form of expression of those earlier words and writings, maybe even, though to a lesser extent, in this writing.

Nonetheless, as the American system of law and jurisprudence is to serve the people in their relentless drive forward toward perfect liberty in Christ Jesus, that same system of jurisprudence can never be brought to bear, to the detriment of one, who, of a pure heart, seeks the truth and is resolved to live at that

liberty. Lyon is obviously such a one, and just as obviously, the tribunals for the State of Alaska have caused a disparagement to him, which Lyon has called on this court to now remedy.

Using the words of Paine, Lyon is of that **succeeding generation** that has every right of his forefathers to be free, regardless of the ignorance, error, and apathy of those generations that have preceded him. That Alaska would be that land where the sovereign people would rediscover these principles, so well understood by "We, the People", and incorporate them into their lives, was anticipated by those persons who wrote the Preamble to the Constitution of the State of Alaska, which states:

> "We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to **secure and**

> **transmit to succeeding generations** our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska." (emphasis added)

A Roman centurion told our Lord and Savior Jesus Christ, "Wherefore neither thought I myself worthy to come unto thee: but say in a word, and my servant shall be healed. For I also am a man set under authority, having under me soldiers, and I say unto one, Go, and he goeth; and to another, Come, and he cometh; and to my servant, Do this, and he doeth it." (Luke 7:6-8) As the Holy Scriptures continue, Jesus marvelled at the great faith of this man. Now Lyon, one of the sovereign people, a man of great faith, acting under authority of God, speaks to his servant. Let his will be done.

Lyon prays, with the intercession of Divine Providence, this Court to accept

this extraordinary writ for docketing and that this common law writ of certiorari will issue to the Court of Appeals of the State of Alaska, for re-examination of the errors at law herein described.

Respectfully submitted this Ninth day of January, in the year of our Lord, Nineteen Hundred and Ninety-five, by Petitioner Frederick Dustin Lyon, who hereby affirms that the facts contained herein are true and correct, to the best of his knowledge.

Frederick Dustin Lyon

Frederick Dustin Lyon, in Propria Persona

APPENDIX

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Exhibit-A: District Court for the State of Alaska, decision rendered at trial on November 5, 1992

Exhibit-B: Court of Appeals of the State of Alaska, Memorandum Opinion and Judgement, entered December 15, 1993

Exhibit-C: Supreme Court of the State of Alaska, Order denying Petition For Hearing, entered March 3, 1994

Exhibit-D: Birth Certificate, Frederick Dustin Lyon

Exhibit-E: Rules of the Supreme Court of the United States (1858), Rule No. 8

Exhibit-F: Constitutional Provisions, Statutes, Ordinances, and Regulations Involved

SUMMARY OF PERTINENT FACTS FROM NOTICE OF NEXT COURT APPEARANCE AND HEARING RECORD, COMPRISING THE DECISION ISSUED AT TRIAL BEFORE JUDGE RHOADES ON NOVEMBER 5, 1992

COURT:	District Court for the State of Alaska at Anchorage		
CASE NO.	3AN 92-6397 CR		
PLAINTIFF:	Municipality of Anchorage		
DEFENDANT:	Frederick D. Lyon		
CHARGE:	Resisting Officer		
TAPE #:	5-3265	LOG #:	610
DATE:	11/5/92	TIME:	1:16
JUDGE:	Rhoades	CLERK:	Peters
COUNSEL FOR PLAINTIFF:	MA: Dale		
COUNSEL FOR DEFENDANT:	Pro per		
DEFENDANT:	Present, Not In Custody		

SENTENCE

FINE:	300/100
FINE DUE:	11/6/92
JAIL:	10/10
CONDITIONS:	No criminal violations 1 year

IN THE COURT OF APPEALS
OF THE STATE OF ALASKA

FREDERICK D. LYON, Appellant, v. MUNICIPALITY OF ANCHORAGE, Appellee.	Court of Appeals No. A-4740 Trial Court No. 3AN-92-6397 Cr MEMORANDUM OPINION AND JUDGEMENT * [No. 2829 - December 15, 1993]

Appeal from the District Court, Third Judicial District, Anchorage, Stephanie Rhoades, Judge.

Appearances: Frederick D. Lyon, pro se, Girdwood, for Appellant. Tracy Gellert, Assistant Municipal Prosecutor, and Richard L. McVeigh, Municipal Prosecutor, Anchorage, for Appellee.

Before: Bryner, Chief Judge, and Coats and Mannheimer, Judges.

MANNHEIMER, Judge.

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* Entered pursuant to Appellate Rule 214 and the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3).

Frederick D. Lyon appeals his conviction for resisting a police officer, Anchorage Municipal Code § 08.05.530(A). We affirm.

On the afternoon of August 18, 1992, Anchorage Police Officer Terry Games stopped a car bearing Alaska license plates with registration tags that had expired in December 1991. Games asked the driver of the car for his driver's license and vehicle registration, but the driver refused to produce them. In fact, the driver refused to identify himself at all to Games.

The driver asked Games, "Am I in custody?", and Games answered, "No, you've just been stopped for a minor traffic violation for expired tags." Games then repeated his request to see the driver's license and registration. The driver

responded, "Well, then, [if I'm not in custody,] I'm leaving." At that point, Games opened the driver's door and removed the keys from the ignition switch. Games then repeated that, even though this was a traffic stop for a minor violation, he still needed to see the driver's license and registration. The driver continued to refuse to produce identification and demanded to be taken to a magistrate. Games then arrested the driver for resisting an officer.

Games patted the driver down to search for identification or weapons, placed the driver in the patrol car, and searched the driver's car for identification. In the car, Games found a leather pouch containing a passport that bore the driver's photograph and identified him as Lyon. By checking this

name against the car's license plate, Games confirmed that Lyon was the registered owner of the car.

Lyon continued to refuse to confirm his identity, provide his address, or respond to any other of Games's questions. Games took Lyon for arraignment before a magistrate. Lyon did give his name to the magistrate and stated that his address was "Girdwood, Alaska, Third Judicial District". The magistrate set a date for Lyon's trial and released him.

Lyon contends that the laws of Alaska and its political subdivisions (in this case, the Municipality of Anchorage) do not apply to him because he was born in Ohio. He likewise contends that the district court had no jurisdiction over him because he was born in Ohio.

To try a person for the commission of

a crime, a court must have both subject matter jurisdiction (i.e., jurisdiction over the offense) and personal jurisdiction (i.e., jurisdiction over the person of the defendant). 21 Am.Jur.2d Criminal Law (1981) 588, § 338. We conclude that the district court had both personal and subject matter jurisdiction in this case.

The actions comprising Lyon's offense took place in Anchorage, Alaska. Every sovereign has jurisdiction over offenses committed within its territory. Corpus Juris Secundum (1989), Criminal Law § 161a, Vol. 22, p. 192. Thus, the Municipality of Anchorage could prosecute the offense. Moreover, the Alaska legislature has vested the district court with criminal jurisdiction extending over the entire state. AS 22.15.070. In the

exercise of this jurisdiction, the district court is empowered to adjudicate violations of the ordinances enacted by political subdivisions of the State of Alaska. AS 22.15.060(a)(1)(B). The district court therefore had subject matter jurisdiction over Lyon's case.

Turning to the issue of personal jurisdiction, a court has personal jurisdiction over a defendant when the defendant has been charged with a crime in an accusatory pleading (a complaint, information, or indictment) and the defendant has been lawfully arrested or has appeared in response to a summons. Under such circumstances, the defendant remains "present" before the court (in the contemplation of the law, for purposes of personal jurisdiction) whether the defendant is held in custody following

arrest, or is released following arrest under bail conditions, or is allowed to depart (following either arrest or appearance upon summons) simply upon a promise to attend future court proceedings. 21 Am.Jur.2d Criminal Law (1981) 590-95, §§ 340-41.

In the present case, Lyon was arrested after the officer stopped him for driving a car whose registration had expired and Lyon refused to identify himself or respond to the officer's inquiries. The arrest was proper under AS 12.25.180(b). The district court's personal jurisdiction over Lyon was established by this arrest and Lyon's arraignment on the complaint. Lyon's place of birth does not affect this legal result.

The municipal ordinance of which Lyon

stands convicted, AMC § 08.05.530(A), declares that it is unlawful "for any person to willfully resist, delay or obstruct any public officer in the discharge [of] ... any duty of his office." Lyon argues that he is not a "person" for purposes of this ordinance.

The Anchorage Municipal Code contains no general definition of the word "person". Compare AS 1.10.060(8). We therefore use the word's common meaning, as disclosed in the dictionary, as our primary aid in determining the municipal assembly's intent when it drafted the ordinance. McKillop v. State, 857 P.2d 358, 361 (Alaska App. 1993); Michael v. State, 767 P.2d 193, 197 (Alaska App. 1988), rev'd on other grounds, 805 P.2d 371 (Alaska 1991).

Webster's New World Dictionary of

American English (3rd College Ed. 1988), p. 1008, lists the primary definition of "person" as "a human being". Under this definition, Lyon is a person for purposes of the municipal ordinance.

Lyon contends that Officer Games violated his rights under the Fourth Amendment to the United States Constitution when he searched Lyon's car. Lyon did not raise this contention in the trial court, and any alleged search and seizure violation in this case is not plain error. Moreau v. State, 588 P.2d 275, 280 (Alaska 1978).

Next, Lyon contends that the trial judge should have instructed the jury to disregard a portion of Games's testimony in which the officer referred to an exhibit that the prosecutor had unsuccessfully sought to admit into

evidence. The challenged testimony was given during redirect examination, when Games read from a printout of Lyon's driving record. Games testified that, although this printout showed that Lyon had been born in Ohio, it also showed that Lyon possessed a current Alaska driver's license that had been issued in 1990, and that Lyon had had an Alaska driver's license since 1985.

Lyon did not object to this testimony. However, when the prosecutor moved to admit the printout into evidence, Lyon objected on the ground that the information in the printout was not all correct. In particular, Lyon claimed, the social security number listed in the printout was incorrect because Lyon had recently repudiated that number, and the state of residence listed in the printout

was incorrect because "AK" was not the name of any state.

The trial judge sustained Lyon's objection to the printout after she determined that Games did not have personal knowledge of the facts listed in the printout. However, Lyon never objected to the officer's testimony summarizing the printout. There is no error, not even plain error, in admitting hearsay testimony when there is no objection. Reese v. Geiermann, 574 P.2d 445, 446 (Alaska 1978); Anchorage v. Nesbett, 530 P.2d 1324, 1336 (Alaska 1975).

In any event, it is clear that Games's testimony, even if inadmissible, was harmless. Games's testimony from the printout was apparently intended to answer Lyon's argument, raised during his cross-

examination of the officer, that he was a "citizen of Ohio". The officer's testimony about Lyon's possession of an Alaska driver's license had no bearing on the charge of resisting an officer, other than to answer Lyon's argument concerning his citizenship. The disputed testimony could not have affected the jury's verdict.

Lyon next contends that the government failed to prove that he had committed the crime defined in AMC § 08.05.530(A). Lyon failed to raise this contention in the trial court, but we examine it because it represents a claim that there was insufficient evidence to support his conviction.

As noted above, the ordinance at issue forbids a person to "resist, delay, or obstruct" a police officer. While the

Municipality might conceivably have charged Lyon with resisting or obstructing Officer Games by trying to drive away from the scene of the traffic stop, the Municipality framed its complaint under a different theory, alleging that Lyon's unlawful act was his refusal to identify himself.

While it could be argued that the ordinance requires something more than a passive refusal to cooperate, cases from other states support the position that the ordinance prohibits a person from willfully and unreasonably disobeying a lawful order of a police officer issued in the lawful performance of official duty. In particular, cases from other states uphold convictions for resisting an officer when a motorist was stopped for a traffic offense and refused to disclose

his or her identity. See People v. Martensen, 245 P. 1101 (Cal. App. 1926); Hall v. State, 411 S.E.2d 274, 275 (Ga. App. 1991); Bailey v. State, 379 S.E.2d 816 (Ga. App. 1989). But see State v. McCrone, 580 N.E.2d 468, 470-71 (Ohio App. 1989).

We construe AMC § 08.05.530(A) to likewise prohibit a motorist from obstructing or refusing to answer a police officer's lawful inquiry into the motorist's identity. Thus, the Municipality presented sufficient evidence of Lyon's guilt.

Lyon also claims that his refusal to speak to the officer was an assertion of his Fifth Amendment right not to incriminate himself, and therefore his refusal to cooperate was privileged. Because Lyon did not raise this claim in

the trial court, we examine it for plain error only.

To show plain error, Lyon must demonstrate that no reasonable judge or lawyer could have failed to see that Lyon's refusal to cooperate with the officer was privileged under the Fifth Amendment. Massey v. State, 771 P.2d 448, 453 (Alaska App. 1989); Carman v. State, 658 P.2d 131, 137 (Alaska App. 1983); Marrone v. State, 653 P.2d 672, 675-681 (Alaska App. 1982). However, there are many cases holding that the right against self-incrimination does not excuse all refusals to provide information, required by statute. See California v. Byers, 402 U.S. 424, 91 S.Ct. 1535, 29 L.Ed.2d 9 (1971) (the Fifth Amendment is not violated by a state law requiring drivers involved in accidents to give their names

and addresses to the other drivers); State Department of Revenue v. Oliver, 636 P.2d 1156 (Alaska 1981) (there is no Fifth Amendment right to refuse to file a tax return); Creary v. State, 663 P.2d 226 (Alaska App. 1983) (Alaska Statute 28.35.080, which requires the driver of a vehicle involved in an accident to give notice of the accident to the police, does not violate the Fifth Amendment). In light of these cases, Lyon's Fifth Amendment claim appears dubious and clearly is no more than debatable. Thus, Lyon has failed to show plain error. Marrone, 653 P.2d at 676.

Lyon next argues that he was denied his right to jury trial. By statute, district court juries comprise six persons, AS 22.15.150, and Lyon was tried by a 6-person jury. He argues that under

the Federal Constitution, he was entitled to a 12-person jury. The United States Supreme Court has rejected Lyon's argument. Williams v. Florida, 399 U.S. 78, 102-03; 90 S.Ct. 1893, 1907; 26 L.Ed.2d 446 (1970).[1] We additionally note that the Alaska Supreme Court has ruled that AS 22.15.150 does not violate the Alaska Constitution. Lopez v. Anchorage, 597 P.2d 146, 147-48 (Alaska 1979); see also Moss v. State, 834 P.2d 1256, 1259 (Alaska App. 1992).

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[1] Indeed, under the Federal Constitution, Lyon had no right to jury trial at all. The maximum penalty for his offense was 6 months' imprisonment and a $1000 fine. AMC § 8.50.010(B)(8). Under the United States Supreme Court's decisions defining the right to jury trial under the Sixth and Fourteenth Amendments, Lyon's crime is a "petty offense", and he had no constitutional right to a trial by jury. Blanton v. City of North Las Vegas, 489 U.S. 538, 543-45; 109 S.Ct. 1289, 1293-94; 103 L.Ed.2d 550 (1989).

We have considered Lyon's contentions, and we find no reversible error. The judgement of the district court is therefore AFFIRMED.

APPELLATE COURTS CLERK
303 K STREET
ANCHORAGE, AK 99501

Case Title: LYON V MOA

Supreme Court Case #: S6171

***** ORDER ***** 03/03/94

IT IS ORDERED: THE PETITION FOR HEARING FILED ON JANUARY 27, 1994, IS DENIED. ENTERED AT THE DIRECTION OF THE SUPREME COURT ON MARCH 3, 1994. (JUSTICE BRYNER, PRO TEM, NOT PARTICIPATING).

CC: JUSTICES, COA JUDGES (A-4740), C/S, JUDGE RHOADES, APPEALS DIV. 3AN-92-6397 CR.

TRW

Clerk of the Appellate Courts

SUMMARY OF PERTINENT FACTS FROM BIRTH CERTIFICATE OF FREDERICK DUSTIN LYON, A CERTIFIED COPY OF WHICH IS PART OF THE RECORD IN THIS CASE

Issued by:	State of Ohio, Dept. of Health Registered No. 6945
Place of birth:	County of Cuyahoga City of Cleveland Booth Memorial Hospital
Date of birth:	April 1, 1943
Child's Name:	Frederick Dustin Lyon
Father's Name:	Joseph W. Lyon
Father's Race:	White
Mother's Name:	Mary Margaret Matosich
Mother's Race:	White

RULES OF THE SUPREME COURT
OF THE UNITED STATES
REVISED AND CORRECTED AT
DECEMBER TERM, 1858

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No. 8.

RETURN TO WRIT OF ERROR, ETC.

1. The clerk of the court to which any writ of error shall be directed may make return of the same, by transmitting a true copy of the record, and of all proceedings in the cause, under his hand and the seal of the court.

2. No cause will hereafter be heard until a complete record, containing in itself, without references aliunde, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

3. [Omitted - not applicable]

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

1. In Congress July 4, 1776. The unanimous Declaration of the thirteen united States of America:

"When in the course of human events, it becomes necessary for **one people** to dissolve the political bands which have connected them with another, and to **assume, among the powers of the earth**, the separate and equal station to which the laws of nature and nature's God entitle them,...
We hold these truths to be self-evident, that all men are created equal, that they are **endowed, by their Creator, with certain unalienable rights**, that among these are life, liberty, and the pursuit of happiness..." (emphasis added)

2. Preamble to the Constitution for the United States of America:

"WE **THE PEOPLE** of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves **and our Posterity**, do ordain and establish this Constitution for the United States of America." (emphasis added)

3. Bill of Rights - Fourth Article:

"The right of **the people** to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (emphasis added)

4. Bill of Rights - Fifth Article:

"No person shall be held to answer for a capital or other infamous crime unless on presentment or indictment of a grand jury,..."

5. Bill of Rights - Sixth Article:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation;..."

6. Constitution for the State of Alaska, Article 1, Sect. 1:

"This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of

happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State." (emphasis added)

7. Anchorage Municipal Code, AMC 9.04.370:

"Person. "Person" means every natural person, firm, corporation, company, partnership, association, organization, business, trust or society."

8. Alaska Statutes, AS 01.10.060:

"'Person' includes a corporation, company, partnership, firm, association, business trust, or society, as well as a natural person;..."